

The protection of whistleblowers

■ LEGAL ALERT 10/2021

In 2019, **Directive (EU) 2019/1937 of the European Parliament and of the Council** on the protection of persons who report breaches of Union law (the "Directive") was adopted, setting out requirements regarding the protection of whistleblowers. The Directive sets **17 December 2021** as the deadline for its transposition into national law.

According to the general assumptions of the act implementing the Directive, the future law is to regulate both the reporting of breaches of European law and national regulations. The protections under the Directive will be extended to a wide range of whistleblowers, including potential, current and former employees, regardless of the legal basis of their employment (employment contracts, civil law contracts, traineeships, volunteer work), as well as to facilitators and third persons connected with the reporting person.

The implementation of the obligations set out in the Directive will involve actions in the areas of corporate law, labour law and personal data protection, as well as actions aimed at preventing unlawful conduct, including white-collar crimes.

The protection of whistleblowers will be based on three main mechanisms:

1. the implementation of an appropriate whistleblowing procedure for three types of actions: internal reporting, external reporting and public disclosure;
2. a reaction (follow-up) mechanism establishing the procedure to be followed after a report is made; and
3. a protection system to safeguard whistleblowers against any retaliation for their actions.

The whistleblowing procedure should determine, among other things, the manner in which a report should be submitted (so-called reporting channels), the person responsible for receiving the same and the manner in which an internal investigation will be carried out. Priority will be given to internal reporting systems, which means that particular importance must be attached to choosing the right person or organisational unit within the entity that will be responsible for receiving reports. The content of the internal procedure will be subject to compulsory consultations with trade unions or employee representatives.

Furthermore, the implemented procedures should ensure confidentiality, impartiality and security for whistleblowers, including the possibility of reporting potential breaches anonymously. The deadline for the adoption of relevant procedures varies depending on the size of the business entity in question: for employers with more than 250 employees, it is 17 December 2021, while for those with between 50 and 250 employees, it is December 2023. Certain entities will be required to establish internal channels and procedures regardless of the number of employees. This will apply, among others, to banks, investment funds, brokerage houses and pension funds.

Even though the legislative process is still under way, employers would be well advised to consider taking appropriate measures

to ensure adequate protection for whistleblowers in the workplace.

We would also like to remind you that entities operating in areas exposed to the risk of money laundering and terrorist financing are already required to implement procedures for the anonymous reporting of actual or potential breaches of anti-money laundering and terrorist financing legislation. Under no circumstances may the implementation of the Directive constitute grounds for a reduction in the level of protection afforded to whistleblowers in this regard.

Please contact us:



Karina Aust-Niewiadomska
PARTNER

KONTAKT
+48 22 520 4237
KARINA.AUST-NEWIADOMSKA
@RYMARZ-ZDORT.COM



Dr Marek Maciąg
PARTNER

KONTAKT
+48 22 520 4334
MAREK.MACIAG
@RYMARZ-ZDORT.COM



Rymarz Zdort
ul. Prosta 18
00-850 Warszawa
TEL: +48 22 520 4000
FAX: +48 22 520 4001

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